IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2508 OF 2001

WITH

SPECIAL CIVIL APPLICATION NO. 2957 OF 2001

AND

SPECIAL CIVIL APPLICATION NO. 2911 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

AMIT KSHATRIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2508 of 2001
MR PM THAKKAR WITH NV ANJARIA for Petitioner No. 1-31
MS. NANDINI JOSHI,Ld. ASST.GOVT PLEADER
for Respondent No. 1,3,5
MR JR NANAVATI WITH AR THACKER for Respondent No. 2

MR MITUL K SHELAT for Respondent No. 4
MR. B.P.TANNA for Respondent No. 6-30

2. Special Civil Application No. 2957 of 2001
MR PM THAKKAR WITH NV ANJARIA for Petitioners
MR JR NANAVATI WITH AR THACKER for Respondent No. 1
MS NANDINI JOSHI, AGP for Respondent No. 2
MR MITUL K SHELAT for Respondent No. 3

3. Special Civil Application No. 2911 of 2001
MR PM THAKKAR WITH BD KARIA for Petitioners
MS NANDINI JOSHI, AGP for Respondent No.1,3 , 4
MR JR NANAVATI WITH AR THACKER For Respondent No.2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 02/07/2001

COMMON CAV JUDGEMENT

1. Rule in Special Civil Application No. 2508 of 2001, 2911 of 2001 and 2957 of 2001. Learned counsel representing respondents in each of the petitions waives service of rule.

2. The petitioners who are Medical Graduates from M.P. Shah Medical College, Jamnagar, filed these three writ petitions challenging the selection made by the Saurashtra University, the Respondent in respect of admission to the Post Graduate Medical Courses. On three different grounds these three writ petitions have been filed by respective petitioners. Since the matters involve about selection list prepared by the Saurashtra University, the respondent, all these petitioners are heard together and are disposed of by this common judgment & order.

3. In Special Civil Application No. 2508 of 2001 the petitioners seek for a direction on respondent Saurashtra University not to treat the students of Rajkot Medical college at par with the petitioners who are from M.P. Shah Medical College, Jamnagar. They have also prayed for preference in the matter of admission to P.G. Medical course over the students of Rajkot Medical College. The respondent University and some students of Rajkot Medical College also filed their counter affidavit. The contention of the respondent University is that the Rajkot Medical College and M.P. Shah Medical College, Jamnagar are both affiliated to Saurashtra University and therefore in the manner of admission to

P.G. Medical course no preferential treatment can be given to the petitioners who are from M.P. Shah Medical College, Jamnagar. It is contended by the petitioners that in year 1995 the Rajkot Medical College started functioning. It is also contended that meritorious students took their admission in the M.P. Shah Medical College, Jamnagar on the basis of merit and the left out candidates in the merit list were later on admitted at Rajkot Medical College. Since the petitioners are more meritorious they seek preference over the students of Rajkot Medical College in the manner of admission in P.G. Medical Course. The University and some students of Rajkot Medical College contended that both, M.P. Shah Medical college and Rajkot Medical College are affiliated with Saurashtra University and MBBS degree is conferred to the successful candidates by Saurashtra University alone, and therefore, there cannot be any question of giving preference to one institution over other institution especially when both the institutions are under same University. It is further contended that all the MBBS examinations (1st, 2nd and 3rd MBBS) have been conducted by Saurashtra University and the students have to answer same questions and examining body of answer sheets are also same and therefore, so far merit is concerned, the same has been correctly determined irrespective of the institution. Mr. Thakkar, learned Senior Counsel with Mr. N.V. Anjaria, appearing on behalf of the petitioners submitted that the Government has framed rules for admission to P.G. Medical Course and in that Rules provisions have been made for giving apreference to certain medical colleges. Learned counsel Mr. Thakkar has also referred the case of JAGDISH SARAN VS. UNION OF INDIA, reported in AIR 1980, Pg. 825. Learned counsel after drawing my attention to aforesaid case law, submitted that, the concept of equality codified in our constitutional system is not violated. The classification is a feature of the very core of equality. It is a vital concept in ensuring equality, for those who are similarly situated alone form a class between themselves and the classification is not vulnerable to challenge if its constituent basis is reasonably related to achieving the object of the concerned law. It has further submitted that, an institutional preference of the kind considered does not offend the constitutional guarantee of equality. " It is accordingly submitted by Mr. Thakkar that, Rajkot Medical College started MBBS course in year 1995 when admission in MBBS course in other colleges have been closed. Mr. Thakkar accordingly submitted that, all meritorious candidates were admitted in the established colleges during the academic session 1995-96. However

the Rajkot Medical College started functioning and the seats were filled up from the remaining merit list, who cold not secure their admission in established colleges. Mr. Thakkar accordingly submitted that the petitioners were admitted to M.P. Shah Medical College, Jamnagar which was functioning for a long time and all meritorious candidates in merit list took their admission in the said college.It is accordingly submitted that the students of M.P. Shah Medical College passed MBBS in 1999-2000 are more meritorious than the students of Rajkot Medical College who has passed MBBS in 1999-2000. Learned counsel accordingly submitted that, since the petitioners who are M.P.Shah Medical College students are more meritorious and they should be given preference in the admission of P.G. Medical College course. It is also contended by Mr. Thakkar that, P.G. Medical course is available only in M.P. Shah Medical College at Jamnagar and there is no P.G. course in Rajkot Medical College. Mr. Thakkar accordingly submitted that, the students who have passed MBBS from M.P. Shah Medical College should be given preference as they will study P.G. Medical course in the same institution and in the known environment. Learned counsel also urges that the petitioners completed their studies from M.P. Shah Medical college where P.G. courses are available. Therefore, there is a legitimate expectation on the part of the students of M.P. Shah Medical College that they will get preference in the matter of admission to P.G. course than the other students who have passed MBBS from other institutions.

4. Mr. J.R. Nanavati, Learned Senior Counsel appearing on behalf of respondent Saurashtra University opposed to such a preferential treatment to the students of M.P. Shah Medical College. It is submitted by Mr. Nanavati that the Government had framed Rules giving preference to certain institutions and those rules are in respect of Residency of the P.G. students. Mr. Nanavati submitted that the admission to the post graduate studies is known as Registration under the respective Universities draws the criteria for admission for registration and the registration of a candidate can be with residency or without residency. The candidates who has registration with residency will get stipend from the Government and the State Government has framed rules for such candidates. Mr. Nanavati, learned counsel for the University submitted that, those rules have no bearing to the admission in P.G. course. Mr. Nanavati further submitted that the case law referred by learned counsel for the petitioner have been discussed by the Apex Court in the case of AHMEDABAD MUNICIPAL CORPORATION

VS. NILAYBHAI R.THAKORE, reported in AIR 2000, S.C. 114. It is submitted by Mr. Nanavati that the Apex Court after discussing various decisions, held that, so far as constitutionality of various rules pertaining to admissions in under graduates courses in educational institutions is concerned, it is now well settled that, so far as under graduate courses are concerned the reservations based on domicile, university or institution are permissible provided the said reservations are not wholesale. Accordingly, Mr. Nanavati submitted that in the present case the question is not with regard to the admission in under graduate course. In these petitions the procedure of admission to post graduation in Medical Courses have been challenged. It is further submitted by Mr. Nanavati that, both M.P. Shah Medical College, Jamnagar and Rajkot Medical College are affiliated with respondent Saurashtra University and the final degree is awarded to the successful candidates of both the institutions by Saurashtra University alone. It is also submitted that the students of both the institutes follow the same syllabus and same examination procedure and examinations are conducted for both medical colleges by Saurashtra University. Mr. Nanavati accordingly submitted that, within the same University, preference cannot be given to students of one institution. It is also submitted by Mr. Nanavati that, in AIR 2000 S.C. 114 the Apex Court has held that, with regard to post graduate and super specialist the Court has prohibited any reservation whatsoever. Mr. Nanavati also referred the case of DR. PARAG GUPTA VS. UNIVERSITY OF DELHI, AIR 2000, S.C. 2319. Mr. Nanavati submitted that, the Apex Court has given guidelines regarding admission in P.G. courses. It is also submitted by Mr. Nanavati that, Apex Court has discouraged the preference in the matter of admission in P.G. & Super Specialist course in medical science. Mr. Nanavati accordingly submitted that, no preferential treatment can be given to the students of a particular institution in the matter of admission to P.G. course in Saurashtra University. There is sufficient force in the submission of Mr. Nanavati. It is an admitted fact that the students of both these two colleges passed their 1st, 2nd and 3rd year MBBS course from Saurasthra University and the examinations were conducted by the same University. When one University conducts one examination for one or more institutions and evaluates the performance of the students it cannot be said that while evaluating performance in examination the university makes any discretion while awarding marks to the students of any particular institution. When the standard of examination is same valuation of the marks are also same, I am of the

view that no preference shall be given to a particular institution simply because P.G. courses are available in one institution and said course is not available to another institution. The students of both the colleges are aspiring for admission in P.G. course. When their merits have been judged by the same University, I am of the view that admission in P.G. course for both the students of these institutions should be strictly on common merit. I do not find any force in the submissions of learned counsel Mr. Thakkar and I am of the view that there is no merit in Special Civil Application No. 2508 of 2001 and accordingly it is dismissed. Interim relief if any stands vacated. Rule discharged.

SPL.C.A NO: 2957 OF 2001.

5. The petitioners seek direction for revising the merit list published on 16-4-2001 (Annexure-A) by the respondent Saurashtra University for admission to P.G. Medical Course. It is alleged that, according to the decision of the University and as per provisions of Regulation 9 of the Indian Medical Council Regulations, the marks have not been properly allotted to the candidates and as such an irregularity has been committed by respondent University in preparing merit list. It is argued by Mr. Thakkar, learned senior counsel appearing on behalf of the petitioners that, while preparing select list for P.G. Medical Course, respondent Saurashtra University did not apply the weightage in percentage to be given to the candidates on the basis of their marks obtained in 1st, 2nd and 3rd MBBS. It is submitted by Mr. Thakkar that Saurashtra University has taken a decision that, for determining the merit of the candidates for admission to P.G. course, there should be 25 % weightage of marks secured at 1st MBBS , 25 % weightage secured at 2nd MBBS and 50 % weightage secured at 3rd. MBBS examination. Mr. Thakkar learned counsel appearing on behalf of the petitioners argued that, in all these three year examinations the total marks are not same and therefore the University has committed a mistake in taking in to consideration 25 % of marks obtained by a candidate in 1st MBBS and 25 % of marks obtained in 2nd MBBS and 50 % of marks from the total marks of 3rd MBBS. It is submitted that in 1st MBBS the total mark is 600, whereas in 2nd MBBS total mark is 480 and in 3rd & final MBBS the total mark is 1120. Mr. Thakkar accordingly submitted that, when total marks of three years are not

same the determination of merit on the basis of 25 % marks from 1st year , 25 % marks from 2nd year and 50 % marks from 3rd year MBBS has resulted in injustice to the meritorious students. Mr. Thakkar submitted that in para-5, 6 and 7 of the petition an ideal example has been incorporated by which out of total marks in all the three MBBS examinations, how best 25 % marks in 1st MBBS, 25 % marks in 2nd MBBS and 50 % marks in 3rd MBBS can be worked out. Mr. Thakkar submitted that, the method adopted by Saurashtra University in calculating the weighted is erroneous and in fact only 18.08 % have been added in the marks of 1st MBBS marks, 14.45 % marks have been added in 2nd MBBS marks and 67.47 % marks have been given to final and 3rd year MBBS examination marks. Learned counsel accordingly submitted that the University should have taken the percentage only and not the total marks of each years examination and the percentage of mark should have been distributed in such a way that the 25 % : 25 % : 50 % are equally distributed in the total marks of the MBBS examinations. Mr. Thakkar, learned counsel for the petitioners submited that the decision of the Saurashtra University dated 11-9-1995 for allotment of 5 % marks both in 1st and 2nd year MBBS examinations and 50 % marks in 3rd & final MBBS is not in conflict with Regulation 9 of the P.G. Medical Council Regulations, 2000, framed by Medical Council of India dated 22-8-2000. But while implementing this percentage the University has adopted wrong procedure and thus misapplied the decision of the University.

6. Mr. Nanavati, learned senior counsel appearing on behalf of respondent University submitted that, there may be different methods of calculation in ascertaining merits, but Saurashtra University has taken a decision on 11-9-1995 that, while assessing the merit of a candidate for admission to P.G. Course 25 % marks will be taken from the result of 1st MBBS examination, 25 % marks will be taken from the result of 2nd MBBS examination and 50 % marks will be taken from 3rd & final MBBS examination. Mr. Nanavati further submitted that, from 1995 this calculation is being implemented for ascertaining cumulative performance of a candidate in all the three MBBS examinations. Mr. Nanavati accordingly submitted that the intention of the University is very clear that while assessing merit for admission to P.G. course 25 % of marks will be taken from the result of 1st MBBS and 25 % marks will be taken from 2nd MBBS and 50 % of marks will be taken from 3rd & final MBBS examination. After adding these three examination marks the total will be arrived at and on basis of total marks obtained by a candidate will be the cumulative performance of all the

three examinations and merit list will be prepared. Mr. Nanavati accordingly submitted that, in the 1st MBBS examination total mark is 600, and whatever marks are obtained by a candidate, 25 % of that marks is taken and similarly 25 % of the total marks obtained by a candidate in 2nd MBBS is taken and 50 % of the marks in 3rd year MBBS of a student is taken and total of these marks are the cumulative performance of a candidate in MBBS examination. Thus the merit list is prepared. Mr. Nanavati further submitted that, instead of complicated calculations the University though it proper to adopt the aforesaid procedure and by that procedure no injustice is done to any candidate. Mr. Nanavati further submitted that, the method adopted by the respondent University is the easiest one and gives clear picture about the total academic merit of a candidate. It is further submitted by Mr. Nanavati that, there may be different method in calculating and since the University is following one procedure, which is in accordance with the Regulations of the Medical Council of India, it cannot be said that the Regulation has not been properly implemented by the University.

7. In Regulation-9 Medical Council of India prescribed four methods for determining the merit of a candidate for admission to P.G. course. It is an admitted fact that the decision of the Saurashtra University is in consonance with Regulation- 9 (2) (iii). The aforesaid provision contemplates ascertaining of merit of a candidate by the cumulative performance at 1st, 2nd and 3rd year MBBS examinations. The respondent University has adopted the procedure for determining the cumulative performance by taking 25 % of marks from 1st MBBS, 25 % of marks from 2nd MBBS and 50 % of marks from 3rd MBBS, and therefore; it is evident that the University will determine the merit by taking in to consideration the cumulative performance of each candidate and the method adopted by the University appear to be most simple and therefore, I do not find any ground to interfere with the decision of the respondent University while determining the merit on the basis of the cumulative performance of a candidate on the basis of 25 % marks in 1st MBBS, 25 % marks in 2nd MBBS and 50 % marks in 3rd MBBS. Accordingly I am of the view that, there may be different procedure for determining cumulative performance of a candidate in examination, but the one adopted by the Saurashtra University cannot be said not a proper procedure in determining cumulative performance of a candidate. The University has taken into consideration the performance of a candidate in 1st MBBS , 2nd MBBS and 3rd & final MBBS examinations, and

therefore, I am of the view that, the method adopted by the Saurashtra University is consistent with the Regulation of the Medical Council of India and the procedure adopted by Saurashtra University is correct. Therefore, I do not find any merit in the arguments of learned counsel for the petitioners. Even if there are different procedures for calculating the cumulative performance of a candidate in different examinations, when the procedure adopted by the respondent University is found to be legal and correct, I do not think, any interference is called for in this respect. Accordingly I do not find any merit in the petition and this petition is dismissed. Rule discharged.

SPL.C.A. No. 2911 OF 2001:

8. In this petition, the petitioners seek for a direction for quashing the merit list at Annexure-B, and also to direct respondent Saurashtra University to prepare fresh merit list for all eligible candidates for admission to P.G. Medical course for year 2001 on the basis of the marks obtained by them in 1st, 2nd and 3rd & final year MBBS examinations in the ratio of 1: 1 : 2, i.e. 25 % of the marks in 1st MBBS, 25% marks in 2nd MBBS and 50 % of the marks in 3rd & final MBBS. The respondent Saurashtra University framed Rules in November 1983 laying down procedure for calculation of marks for admission in P.G. Medical course. Said rule is at Annexure-B to Spl.C.A. No. 2508 of 2001. Various methods have been determined for ascertaining the merit of a candidate for admission in PG course. Subsequently on 11-9-1995 the rule has been modified to the extent that merit would be determined on the basis of 25 %, 25 % and 50 % marks obtained in 1st, 2nd and 3rd year MBBS examinations and this procedure shall be implemented for the students taking admission in 1st MBBS in August 1995 and onwards. For the students who were admitted prior to August 1995, 1983 unamended rules are continued for determining merit of a candidate for admission to PG Medical course. In the meantime the Medical Council of India framed the P.G. Medical Education Regulations 2000 on 22-8-2000 prescribing the procedure for admission to P.G. course. In Regulation-9 Medical Council has prescribed four different procedure for determining the merit of a candidate for admission in P.G. course. It appears that, Saurashtra University has adopted the 3rd method, that is Regulation 9 (2) (iii) of the Medical Council Regulations for determining the merits of the candidates who are admitted in 1st year MBBS after August

1995. For those who have been admitted in 1st year MBBS prior to August 1995, 1983 Rules continued to be applied in Saurashtra University for earlier admitted students. While preparing merit list for admission to P.G. course respondent Saurashtra University has considered the merits of the students who were admitted to 1st year MBBS prior to August 1995 by taking in to consideration their performance in final MBBS examination. However, there are some procedure for deduction of marks for who have failed their 1st or 2nd MBBS in first or second attempt.

9. The petitioners in this case challenged the merit list of earlier students because the cumulative performance of earlier students has not been determined by respondent University and only result of 3rd & final MBBS examination were taken into consideration by respondent University while determining merit of the candidates who were admitted to 1st year MBBS prior to August 1995. So far candidates who have been admitted to 1st year MBBS after August 1995, Saurashtra University is determining the cumulative performance of a candidate by giving weightage of 25 % of the marks of 1st MBBS, 25 % on the basis of 2nd MBBS and 50 % on the basis of marks in 3rd MBBS. It is contended by learned counsel for the petitioners that, in view of Regulation-9 of the Medical Council of India, the University should have adopted one procedure for determining merit of the candidates where such candidate is admitted prior to August 1995 or after August 1995.

10. I have requested Mr. B.P. Tanna, learned senior counsel to explain the legal position on this matter. Mr. Tanna, learned counsel submitted that, one procedure should be adopted by the University for determining merit of all the candidates who have passed MBBS examination. It is submitted by Mr. Tanna that the candidates who have taken admission prior to August 1995, they had to pass 1st and 2nd MBBS examinations to qualify for appearing in 3rd & final year MBBS examination. It is also submitted by Mr. Tanna that all the students of MBBS course who were admitted after August 1995 or before 1995, had to clear 1st, 2nd and 3rd MBBS examination. All these examinations are distinct and separate. It is accordingly submitted by Mr. Tanna that, when both the group of students have passed 1st, 2nd and 3rd MBBS examinations and these examinations are being separate and distinct, there is no reason to apply one set of rule for determining the merit of a candidate who has been admitted to 1st MBBS after August 1995 and another set of rule for a candidate who were admitted to 1st MBBS prior to August 1995. Mr. Tanna further submitted that, now

the method has been settled by Medical Council of India. Medical Council of India has framed Regulations in August 2000 providing methodology or procedure for admission to P.G. Medical courses. Mr. Tanna submitted that the Regulations framed by the Medical Council of India are not only guidelines or advise to the Universities but these Regulations have a binding force, and Saurashtra University is under an obligation to comply with such regulations. It is also submitted by Mr. Tanna that, four different methods have been prescribed in Regulation-9 for adoption by the Universities for determining the merits of the students for admission in P.G. course. It is an admitted fact that as per the procedure laid down by Saurashtra University, so far the candidates admitted after August 1995 in 1st MBBS are consistent with Regulation - 9 (2) (iii) of the Indian Medical Council Regulations. Mr. Tanna also submitted that, for admission to P.G. Medical Course the over all performance of a candidate is required to be examined and in Regulation- 9 (2) (iii) the Medical Council of India prescribed that the cumulative performance of a candidate in the 1st, 2nd and 3rd MBBS examinations are to be considered for admission to P.G. Medical courses. Mr. Tanna accordingly submitted that the respondent Saurashtra University is under an obligation to prepare the merit list as per the Regulations of the Medical Council of India for admission to P.G. Course. It is also submitted by Mr. Tanna that the stand of the respondent Saurashtra University is that, they have provided separate procedure for assessing merits of the candidates who have been admitted in 1st year MBBS after August 1995 and the earlier batches of students were not intimated that such procedure of giving weightage to three different examinations will be considered for admission to P.G. course. Since the earlier batches of students were not intimated that this new procedure would be applicable to them, they cannot claim any protection under the old rules. Old rules provides that for admission to P.G. courses for earlier batches of students final year's result will be considered for merit. Mr. Tanna also argued that since there were other sets of rules for earlier students they cannot apply after coming into force of the Indian Medical Council Regulations 2000 regulating admission to P.G. course. It is submitted by Mr. Tanna that, the Medical Council of India framed their regulations on 22-8-2000 and after coming into force of that regulations, all admissions in P.G. courses are to be made by the Universities strictly in accordance with Regulation-9 of the aforesaid Regulations. Any rule framed either by the University or by the Government cannot be applied after

coming into force of the Indian Medical Council Regulations on 22-8-2000. In this connection Mr. Tanna has referred the case of PUNJAB UNIVERSITY VS. SUBHASH CHANDER AND ANOTHER, AIR 1984, S.C. 1415. Mr. Tanna submitted that in the aforesaid case the student was admitted in year 1965 when there was provision for giving one percent grace mark of the aggregate marks of 1600. Therefore a student would get 16 grace marks in total for passing the examination. In 1974 the earlier Regulations were amended by Punjab University and it has been provided in the amended rules to award total 4 grace marks only. Mr. Tanna submitted that the student in that case took the stand that, according to earlier regulations he is entitled to 16 grace marks but as new Regulation of 1974 has been applied in his case and only 4 marks have been given, he has been declared failed by one mark in obtaining 50 % marks. In the aforesaid case the Apex Court held that declaration of Subhash Chander as failed by virtue of amended regulations was not invalid. Mr. Tanna submitted that when rules are framed and retrospective effects are not given to such rules then the new rules will apply in all the cases whether he has been admitted in 1965 or after amendment of rules. When the results are declared the regulation as in force will have to be applied. Mr. Tanna, assisted by learned counsel Mr. Mitul Shelat appearing on behalf of Medical Council of India submitted that, after coming into force of the P.G. Medical Education Regulations 2001 on 22-8-2000 by Medical Council of India, there is no scope for the respondent Saurashtra University to take two different criteria for two different batches of MBBS candidates for admission to P.G. course. It is submitted by Mr. Tanna that so far admission to P.G. course is concerned where the Medical Council of India framed the rules, the Universities are under an obligation to follow the same. It is also submitted by Mr. Tanna that, as per Regulation-9 University must determine the merit of candidates of cumulative performance at 1st, 2nd and 3rd MBBS examinations, and these Regulations are binding on the Universities and there cannot be other method of determining the merit for admission to P.G. course. Mr. Tanna accordingly submitted that, determination of merit of the earlier batch of candidates on the basis of 3rd and final year MBBS examination result is contrary to the provision of Regulation 9 of the Medical Council Regulations-2000. Mr. Tanna also submitted that Regulation-9 do not give any retrospective effect and therefore all admissions to academic year 2001-2002 are to be made in accordance with the regulations framed by Medical Council of India. Mr. Tanna accordingly submitted that the University may be

directed to prepare revised merit list at Annexure-B by following the same method for both these groups of students who are admitted to 1st MBBS after August 1995 or prior to August 1995.

11. Mr. J.R. Nanavati, learned Sr. Counsel appearing on behalf of respondent University submitted that, it is true that the University is under an obligation to adopt the procedure laid down by Medical Council of India in Regulation -9. It is submitted by Mr. Nanavati that the Medical Council of India prescribed four different methods for determining merit of a candidate for admission to P.G. course. Mr. Nanavati accordingly submitted that, the University will have to adopt any one of the procedures laid down by the Medical Council of India. Mr. Nanavati submitted that, Medical Council of India framed Regulations in August 2000 and the same was published only in October 2000. Therefore the University should be permitted to apply their 1983 Rules for determining merit of the candidates who were admitted to 1st year MBBS prior to August 1995. Mr. Nanavati also submitted that the recommendations made by Medical Council of India in Regulation-9 is required to be adopted by the University. University may adopt any one of the four procedures laid down in Regulation -9 and for adoption University will have to examine the same and that will take some time and, in the meantime, admission in P.G. medical course 2001-2002 will be over. Mr. Nanavati accordingly submitted that, since the earlier students were not intimated that merit will be determined on the basis of weightage of marks in all the three examinations, an injustice will be caused to them if Regulation-9 of the Medical Council Regulations are applied in case of earlier batches of students.

12. It is an admitted fact that both the batches of students whether admitted prior to August 1995 or after August 1995, had to pass 1st, 2nd and 3rd or final MBBS examinations. Since both the batches of candidates have to appear and pass individually 1st, 2nd and 3 rd. MBBS examinations, I am of the view that one procedure should be adopted for determining the merit. The Medical Council of India framed regulations in August 2000 and therefore I am of the view that admissions in P.G. Medical Courses are to be made strictly in accordance with Regulation -9 of the Indian Medical Council Regulations. The respondent Saurashtra University did not adopt competitive examination or other methods for determining merit of the candidate for admission to MBBS course. However Regulation No. 9 (2) (iii) makes a

clear provision for taking in to consideration the cumulative performance of the candidates in the 1st, 2nd and 3rd & final MBBS examinations. I do not find any difficulty for the Saurashtra University to implement the same. The old batches of students also passed 1st. 2nd and 3rd MBBS examinations, therefore to consider merit or cumulative performance, I am of the view the performance of earlier students in 1st, 2nd MBBS examinations are also required to be considered for determining their merit. It is an admitted fact that the respondent University has taken into consideration only 3rd MBBS result in case of students who were admitted prior to August 1995. Final year result alone cannot determine the cumulative performance of a candidate of all the three examinations of MBBS. Therefore, I am of the view that, in case of students admitted prior to August 1995, Regulation 9 (2) (iii) should be strictly followd for determining the merit of the students. The purpose of determining the merit on the cumulative performance of 1st, 2nd and 3rd MBBS examination is to ensure the merit of the candidate. The performance is also to evaluate a candidate by a common yard stick. In case of selecting suitable candidates for specialised education like PG Medical course, it is necessary that a comon criteria should be adopted for all categories of candidates. This alone can balance the competitive equities of having competing students for specialised education. Accordingly I do not find any force in arguments of Mr. Nanavati for adopting two different methods for determining the meerits of 2 different types of candidates, one who is admitted in 1st MBBS after August 1995 and another who has taken admission prior to August 1995. The University should strictly follow one method for determining merit for admission to P.G. course which must be in accordance with Regulation-9 of Medical Council of India regulations. Therefore I am of the view that Special Civil Application No.2911 of 2001 should be allowed. Accordingly, University is directed to modify the merit list for admission to P.G. course during academic year 2000-2001 at Annexure-B of Special Civil Application No. 2911 of 2001. The respondent Saurashtra University is directed to determine the merit of all the candidates irrespective of the fact whether particular candidate has been taken admission in 1st year MBBS after August 1995 or has taken admission prior to August 1995. The cumulative performance of all the candidates in 1st, 2nd and 3rd MBBS examinations are to be considered for determining individual merit of the candidate for admission to P.G. Medical course. The respondent Saurashtra University is accordingly directed to modify the merit list in accordance with the aforesaid

directions given. The petition is accordingly allowed. However, I make no order as to costs.

13. I express my thanks to Mr. B.P. Tanna, learned Senior Counsel for assisting the Court in interpreting the legal position as to which law would apply in determining merit of all categories of candidates seeking admission to P.G. Medical Courses.

14. I make no order as to costs in the petitions.

Dt: 2-7-2001

(P.K. Sarkar, J)

/vgn